

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 63 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANCHANLAL SHIVALAL

Versus

DHANESH DYEING AND PRINTING WORKS

Appearance:

MR VJ DESAI for Petitioner

MR AC GANDHI for Respondent No. 1

MRS KETTY A MEHTA for Respondent No. 2, 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. Appellant-original plaintiff, by filing this appeal under Section 96 of the Code of Civil Procedure, 1908, has challenged judgment and decree dated September 5, 1979, passed by learned Joint Civil Judge (S.D), Surat, in Special Civil Suit No.287 of 1977, by which, learned trial judge dismissed the suit of the appellant-plaintiff on the ground that the Civil Court of Surat had no territorial jurisdiction to try the suit, as cause of action had not arisen within territorial jurisdiction of Civil Court at Surat.

2. The appellant was running a cloth factory at Salabatpura, Surat, wherein, he was manufacturing cloth for sale. Respondents Nos. 2 and 3 were dealing in cloth in the name of respondent No.1, M/s. Dhanesh Dyeing and Printing Works, having its office at Narayan Nagar, Lalbahadur Shastri Road, Ghatkoper, Bombay. According to the appellant, on October 29, 1974, and November 4, 1974, the respondents had purchased grey cloth worth Rs.11,201/- on credit, for which bills Nos.218 and 219 were issued. After several demands, the respondents gave cheque of Rs.6,000/- drawn on Union Bank of India, Kurla Branch, Bombay, which came to be dishonoured when presented to the Bank. The appellant therefore served notices to the respondents on March 19, 1975 calling upon them to pay the dues. The respondents did not respond to the said notices and the appellant was constrained to file Special Civil Suit No.287 of 1977 in the Court of Civil Judge (S.D.), Surat, for a decree of Rs.16,240/- with costs of the suits, and with future interest at the rate of 15% per annum on the decretal amount.

3. The respondents filed their written statement at Exh.15, inter alia, contending that the Surat Court had no jurisdiction to try the suit because neither purchase order for cloth nor delivery of the goods nor payment was made at Surat. The respondents further contended that the goods which were purchased through the appellant's broker, Jugalkishore, were defective. It was further contended that, on assurance given by broker, Jugalkishore, for settlement of the matter, the respondents had given cheque of Rs.6,000/- as part payment, but, as nothing was done by the appellant and his broker, Jugalkishore, the respondents had stopped payment of the said cheque on the aforesaid ground. The respondents therefore pleaded that the suit be dismissed with costs. On rival pleadings of the parties, the trial court framed issues at Exh.17.

4. The appellant himself examined at Exh.29 and produced documentary evidence consisting of challans Exh.30 and Exh.31. Carbon copies of the bills and account book showing the respondents' account were produced at Exh.34, 35 and 36 respectively. On behalf of the respondents, no evidence was produced.

5. The trial court held that the respondents had failed to prove that the goods supplied to them were defective and were inferior in quality. However, the trial court dismissed the suit of the appellant on the ground that it had no territorial jurisdiction to

entertain the suit as no cause of action had arisen within the jurisdiction of the Civil Court, at Surat. In the ultimate analysis, the trial court dismissed the suit of the appellant, which has given rise to filing of this appeal by the appellants.

6. Heard learned advocates appearing for the parties.

7. Learned counsel for the appellant, Mr. V.J. Desai, has taken me through the entire evidence on record of the case and has submitted that the trial court had erred in not appreciating that the suit transaction had entered into at Surat and the goods were also delivered from Surat and, therefore, the Civil Court at Surat had jurisdiction to try the suit. Learned counsel for the appellant has further submitted that the respondents had come to Surat for negotiation for the said transaction. That, the bills issued for the goods sold also indicated that the said bills were issued subject to 'Surat Jurisdiction'. Learned counsel for the appellant has further submitted that the appellant had led sufficient evidence to show that cause of action had arisen within the jurisdiction of the Civil Court, at Surat, and, therefore, this appeal be allowed and the impugned judgment and decree be set aside and the plaintiff's suit be decreed.

8. Admittedly, the respondents reside and carry on business at Bombay and grey cloth as per challans Exh.30 and 31, was delivered at Bombay by the appellant's commission agent, Jugalkishore, and a cheque for Rs.6,000/- was also given to said Jugalkishore at Bombay. The trial court, on appreciation of evidence of the appellant, had recorded finding that the respondent had never come to Surat and purchased goods but, in fact, the suit goods were purchased through the appellant's commission agent, Jugalkishore, who was staying at Bombay. The bills cum challans Exh.30 and Exh.31 also mentioned the name of broker, Jugalkishore. In my opinion, the finding recorded by the trial court that no cause of action had arisen within jurisdiction of the Civil Court, at Surat, is eminently just and proper. However, instead of dismissing the suit, the trial court ought to have returned plaint to the appellant for presentation in the appropriate Court as per the provision of Order 7 Rule 10 of the Code of Civil Procedure. If the Civil Court at Surat had no jurisdiction, it was not proper for the trial court to dismiss the suit, but it ought to have returned the plaint to the appellant for presentation to the proper

court. Rule 10 provides that at any stage of the suit, plaint can be returned to the plaintiff for presenting to the court in which the suit should have been instituted. In view of the provisions of Order 7 Rule 10 of the Code of Civil Procedure, the judgment and decree of the trial court deserves to be quashed and set aside. Instead, it is ordered that the plaint be returned to the appellant
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9. As a result of foregoing discussion, the judgment and decree dated September 5, 1979, passed by learned Joint Civil Judge (S.D), Surat, in Special Civil Suit No.287 of 1977 is quashed and set aside. It is ordered that the plaint be returned to the appellant for presentation to the proper court. The Office is directed to send record and proceedings to the Court of learned Civil Judge (S.D.), at Surat, who, in turn, return the plaint to the plaintiff for presentation in the appropriate forum. With the aforesaid direction, this appeal is partly allowed, with no order as to costs.

(swamy)